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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,035

08/05/2003

Kevin L. Mercuri

10151-001

7274

29391

7590

08/14/2006

BEUSSE WOLTER SANKS MORA & MAIRE, P. A.  
390 NORTH ORANGE AVENUE  
SUITE 2500  
ORLANDO, FL 32801

EXAMINER

DONNELLY, JEROME W

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/635,035

Applicant(s)

MERCURI ET AL. ✓

Examiner

Jerome W. Donnelly

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3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-7-20 are subject to restriction and/or election requirement.

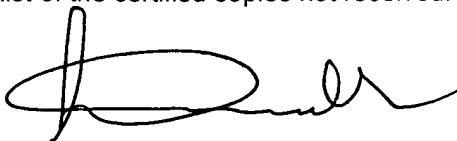
**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



JEROME DONNELLY  
PRIMARY EXAMINER

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/21/03</u>  | 6) <input type="checkbox"/> Other: ____                                     |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hathaway.

Hathaway discloses a device comprising: a device formed in the shape of a curved enclosure said device having first and second handles (16) supported on the ends of said enclosure and wherein said device has a closable opening formed to receive element 36, 40 and 50 as claimed in claims 1, 2, 8.

In regard to claims 3, 5 and 7 Hathaway has a length and diameter which relates to the amount of weight it will hold.

In regard to claim 4, Hathaway is capable of being formed into a circular cross section when using the insert 40 of Hathaway fig. 4.

In regard to claim 6, element 50 is non-porous to liquid.

In regard 10, note the opening (14) of Hathaway which is positioned on an upper surface the device.

In regard to claims 13-16 Hathaway discloses a device wherein the enclosure is capable of being formed into a substantially circular enclosure having first and second ends, said handles being disposed on said end surfaces respectively.

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In regard to claim 16 note looped members 16 of Hathway.

Claims 9 and 12 rejected under 35 U.S.C. 102(b) as being anticipated by Lindsay.

Lindsay discloses a curved enclosure having ends, handles disposed on the ends, a closable opening and a cap for removably closing the opening.

Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Stephan et al.

Stephan discloses a device comprising an curved enclosure, first and second handles 14 and 16, closable openings and a plurality of end caps which close said openings.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Note the handles and filling material of Barnett.

Note the shape of Roberts et al and Mangano.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-16, drawn to apparatus, classified in class 482, subclass 105.

II. Claims 17-20, drawn to apparatus, classified in class 482, subclass 104.

The inventions are independent or distinct, each from the other because:

One of the inventions is a weight and the other invention is a weight bench or rock.

Inventions Group I and Group II are related as combination and subcombination.

Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that

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the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because Group III. The subcombination has separate utility such as being used to store other items.

During a telephone conversation with John DeAngelis Jr. on 7-24-06 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-16. Affirmation of this election must be made by applicant in replying to this Office action. Claim 17-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY  
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Jerome Donnelly', with a large, stylized loop at the beginning and a long, sweeping tail.